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Current Topics.

The Bench and Politics.

THE importance of an independent Bench and Bar in a democracy is one of the greatest lessons the world has re-learnt in its experience of dictatorships in the years between the wars. Just as it is necessary for every tyranny to infiltrate and finally dominate the Bench and Bar with its executive officers, so it is vital for a democracy to sustain itself with the rule of law and the complete freedom of the Bench and Bar from political interference or influence. "An Eminent Member of the Bar" writing in the *Sunday Times* of 3rd December pointed to a number of shortcomings in respect of the ideal separation of the executive from the judiciary in our present constitution. The Lord Chancellor, he pointed out, is a member of the Cabinet, and besides occupying the Woolsack in debates in the Lords, acts, speaks and votes as a party politician. Law Lords, too, are entitled to engage in politics as well as to sit as the final Court of Appeal. The Attorney-General also has both political and quasi-judicial functions, in addition to which he is head of the Bar, and frequently succeeds to the office of Lord Chancellor or Lord Chief Justice. In a general criticism of "political appointments" the writer admitted that in few cases can it be alleged that a judge in modern times is influenced by his political opinions, but as it by no means follows that skill in political debate makes for judicial competency "it is a distinct flaw in our legal system that appointments to the Bench should be due to any reason other than the legal experience and personal qualification of the person appointed." One recalls the story of the well-known party man who, after his appointment to the Bench, received the following cruel compliment: "Old man, I never realised what a splendid advocate you were until I heard you sum up that case to the jury." This may or may not be true, but the author of "Justice in a Depressed Area" (Charles Muir) vouched for an actual instance of the appointment to the County Court Bench of a man who died in office in 1931 and who had "never had a very large or lucrative practice at the local Bar, and according to his own statement owed his elevation to the County Court Bench to the fact that his father helped LORD HERSCHELL to run a Parliamentary election" (p. 105). Democracy can be endangered by internal decay as well as by foreign enemies, and it can only be saved, particularly in these days of necessary increases in the economic functions of the State, by insisting on the necessity of a periodic overhaul of the system of judicial appointments. The price of liberty is eternal vigilance.

Delay of Divorces.

THE recent legal innovations by which the Lord Chancellor is permitted to direct the transfer of puisne judges of the High Court from one division to another, the appointment of additional judges and the new arrangements under which divorce judges visit assize towns either on regular circuits or wherever additional help is required with the lists at any particular time, were intended to cope with the increasing amount of divorce work all over the country. Mr. Justice WROTTESLEY remarked at the Nottingham Assizes on 25th November that he could see very little chance of taking any divorce cases before the end of the Assizes, and petitioners could have their cases adjourned either to the next assizes or to the Birmingham Assizes. His lordship added that there could be no certainty of obtaining a hearing at Birmingham, the list there being already filled. Having regard to the arrangements made to meet exactly this sort of situation, it is surprising that it should occur at all, with the heavy expense and inconvenience it means to litigants, many of them in the services and some of them on active service abroad. If there are still not sufficient judges to go round, more commissioners will have to be appointed. Especially at this juncture it is quite wrong that solicitors should have to explain to rightly indignant clients that the fault is not in themselves that their causes are delayed, but in those who have in their charge the arrangement of judicial business.

Legal Tuition for Returning Solicitors.

THE decision of the Council of The Law Society, reported in *The Law Society's Gazette* for November, to publish a note-book to be called "Modern Law Manual for Practitioners" will be received with joy and relief by all members of the profession who for reasons arising out of the war have been out of touch with practice during the last few years. The new manual will no doubt explain in simple language the mysteries of liabilities adjustment, courts' emergency powers, rent restrictions, landlord and tenant in relation to war damage, compensation (defence) law and procedure, price control, limitation of supplies, and all the emergency law and new permanent law with which practitioners have had to familiarise themselves during the last few years. The book, which is to be published jointly by Messrs. Butterworth and Co. (Publishers), Ltd., and Messrs. Sweet & Maxwell, is not intended to supplant the "refresher courses" which were originally and apparently still are intended. These courses, it may be recalled, are to consist of (*a*) a six weeks' whole-time course in special subjects such as conveyancing, income tax, divorce law, etc.; (*b*) a series of evening lectures on these subjects; and (*c*) a special whole-time series lasting three weeks in war-time legislation. The book is intended primarily as a stop-gap, pending the present period of difficulty in arranging the courses owing to "the lack of men available and qualified to prepare the ground and lecture upon it." The Council states that they must obviously possess not only teaching ability, but also practical knowledge of the day-to-day changes which have been made in the law since the war began." The book is also intended to "interlink with the syllabuses and lectures for the refresher courses," and it is added that work on the preparation of these is proceeding while the book is in preparation. It is good news to hear that the refresher courses are in preparation. We would respectfully put forward the view that there is at present a trickle of men returning from the Forces, and this may very soon become a flow. The refresher courses should be ready at the shortest notice, and while the shortage of lecturers may be admitted, we venture the suggestion that if an appeal is made to practitioners to give up one night occasionally to explaining the new laws to returning solicitors, pending the arrangement of more symmetrical courses, the result would be entirely satisfactory. In choosing between lecturers with little practical experience and practitioners with little teaching experience it should be borne in mind that not all lecturers are good teachers, especially when the pupils are past their student days.

Jurisdiction of Quarter Sessions.

JUST how careful magistrates must be when committing accused persons to quarter sessions, is illustrated by a consideration of the Administration of Justice (Miscellaneous Provisions) Act, 1938. Section 1 provided for the appointment of legally qualified chairmen and deputy-chairmen to quarter sessions. Section 2 extended the jurisdiction of quarter sessions presided over by a legally qualified chairman to the trial of twelve classes of offence listed in the First Schedule. These include certain offences of personation, malicious damage, concealment of birth, gross indecency, fraudulent printing of dies, perjury, certain coinage and conspiracy offences, and a number of classes of forgery. Section 2 (2) gives a comprehensive definition of legally qualified chairman. The Recorder of Guildford, Mr. DEREK CURTIS-BENNETT, K.C., recently raised the question whether he was a "legally qualified chairman" within the Act, in view of the fact that the borough had not as many as 50,000 inhabitants, the minimum population laid down by s. 2 (2) (*f*) for the purpose of qualifying a recorder, a deputy recorder, or an assistant recorder to be a "legally qualified chairman." The case was

transferred under s. 2 (6) to Kingston quarter sessions, where His Honour Judge TUDOR REES is the legally qualified person. The *Star* of 18th November, in reporting this occurrence, commented: "If the unpaid chairman had no legal qualification beyond being a J.P., he could have tried a case which a K.C. could not try." This is not quite correct, for s. 1 (1) of the Act defines a legally qualified chairman appointed under the Act as "a person who is or has been a barrister or solicitor of not less than ten years' standing having such legal experience as to qualify him in the opinion of the Lord Chancellor to act as chairman or deputy chairman of quarter sessions. The only others who may be regarded as legally qualified chairmen are enumerated in s. 2 (2), all of whom are persons of high legal qualifications. It is quite true that under s. 2 (5) where at any court with a legally qualified chairman, no legally qualified chairman is present, the court will none the less have the extended jurisdiction if it is "presided over by a justice of the peace for the county deputed to preside at that session by a legally qualified chairman of the court and the justice so deputed is either a person who holds or has held one of the offices mentioned in subs. (3) of this section or a person approved by the Lord Chancellor as being qualified to act as such a deputy." It would be in a very rare emergency indeed that the Lord Chancellor would approve the appointment of a mere unpaid magistrate, and indeed it is doubtful whether he has power to do so under the section.

Administrative Law and Conscientious Objectors.

THE cause of the conscientious objector can hardly be called popular from any point of view, but the principle of freedom of conscience is one of the most valuable in a democratic State. Difficult juristic problems are raised by the necessity for effecting a compromise between the necessary safeguards against the abuse of the system of protection and the effective protection of the sincere objector. In an article in the *Journal of the Institute of Public Administration*, Summer Number, 1944, which has just been published, Mr. ROBERT S. W. POLLARD examines the constitution and working of the conscientious objector tribunals and compares them with the principles laid down by Dr. W. A. ROBSON in his "Justice and Administrative Law" (Macmillan, 1928). The writer notes of the procedure that it is informal, and, in many cases designed to put an applicant at his ease, a question often forgotten in law courts. The length of hearing may vary from five to fifteen minutes. Letters, hearsay evidence, leading questions and statements of opinion are often admitted, as the ordinary rules of evidence do not apply (S.R. & O., 1939, No. 1120, reg. 23). Professional advocates do not often appear, but the writer, after experience of some hundreds of cases, states that the advantages of representation are fairly apparent. Knowledge of the tribunal and ability to present a case are in the writer's opinion among the most important advantages of professional representation. There are, however, disadvantages: "Barristers sometimes tend to argue before tribunals as if they were in court, and their unnecessarily long speeches may have the effect of irritating a tribunal faced with a long list of cases." Among the defects of the tribunals he notes their failure to give reasoned judgments, publish precedents and observe uniform standards. The last defect is, the writer states, in direct conflict with principle 3 laid down by Dr. ROBSON in his book: "A greater consistency of treatment and co-ordination of results is to be anticipated from a single central tribunal than from a group of courts whose decisions are not co-ordinated in an organised fashion in questions of fact." If we see the matter aright, this is one of the fundamental problems raised by the establishment of any sort of tribunal. Uniformity itself, however desirable to the blue-print planner, is far from a desirable object in itself in practice, and if carried too far is apt to become a bed of Procrustes, to fit which each case has to undergo the appropriate mutilation or distortion. A better remedy seems to be a more careful choice of judicial personnel from persons experienced in court procedure, which is dealt with in principle 12 of Dr. ROBSON'S work. In Mr. POLLARD'S opinion the standard of personnel of the tribunals is high, but staleness has crept in, and it would be helpful if members were "shuffled" from time to time. He also observes that tribunal members lack the training which Dr. ROBSON considers to be desirable ("an adjudicator who will combine a knowledge of law with a thorough training in economics and the social services"). Whether we like it or not, as the writer says, administrative tribunals have come to stay, and he observes that of all these tribunals it is curious that those for conscientious objectors alone have the benefit of good standards of practice. He instances the secret hearings under the Unemployment Insurance Acts and the lack of right of audience for lawyers in tribunals under those Acts and in hardship committees. The article is thought provoking and deserves consideration by every lawyer.

Parents and Children's Torts.

IT is a fascinating and instructive study to compare the development of the English law of torts with that operating in the various United States of America. In the issue for June, 1944, of the *North Carolina Law Review*, which has just come to hand, there appears a short but weighty article headed "Torts—Liability of Parent for Torts of Child—Dangerous Weapons" by Mr. CECIL J. HILL. The principle in operation in the States is that of the English common law, that the parent is liable for the torts of his child only on such grounds as would make him liable for the torts of any other person. Among cases cited in support of the proposition that a parent is liable for torts committed by his child within the scope of the employment of the child was the English case of *Dixon* v. *Bell*, 5 Maule and Sel. 198, in which an employer entrusted a loaded gun to an inexperienced servant girl and was held to be liable for the consequent damage. For the proposition that a parent is liable for his own negligence in placing a dangerous gun where an infant can reach it, the writer cited, *inter alia*, the English case of *Sullivan* v. *Creed* [1904] 2 K.B. 317, in which a parent left a gun inside the stile of his own land, next to a path leading from a public road to his own cottage. The writer cited a large number of American cases to illustrate the general propositions of liability which he laid down, in relation to a parent permitting an infant child to have or use a gun. The child, he wrote, must have been careless in the past, or must have been of such tender years as to indicate his incapacity to handle a dangerous weapon. The parent must have notice of the child's carelessness, negligence or recklessness, and having such knowledge, must have made it possible for the child to do the mischief. Finally, the child must have inflicted injury upon the plaintiff for which the plaintiff could have recovered from the child. Possibly in this country, where the possession of firearms is governed by stricter rules (see Firearm Act, 1937), the rule of liability of persons negligently allowing young and inexperienced children to possess firearms might be applied more strictly. It may even be held that a breach of s. 19 of the Firearms Act, 1937, restricting the purchase and possession of firearms by young persons may render a giver, vendor or lender liable to an action for damages for breach of statutory duty at the suit of a person thereby injured (cf. *Monk* v. *Warbey* [1935] 1 K.B. 75). It is interesting to observe from the article that statutes of Louisiana and Georgia have made parents liable for torts committed by children in varying circumstances. The question is of interest to English lawyers, for the circumstances of these cases, though less likely to arise here than in places where the use of firearms is less restricted, are not impossible in this country.

Black Sheep.

FROM time to time suggestions have reached us that our columns should record the findings of the Disciplinary Committee of The Law Society and convictions of solicitors for criminal offences affecting them professionally. The absence of this information, it is suggested, has caused, and is liable to cause, inconvenience and delay to other members of the profession. Commencing with the first issue of our next volume in January, 1945, we propose, therefore, to record briefly this information, and we hope readers will approve this policy.

Recent Decisions.

In *Woodward and Anor.* v. *Mayor of Hastings and Others*, on 27th November (*The Times*, 28th November), the Court of Appeal (SCOTT, MACKINNON and DU PARCQ, L.JJ.) held that the governors of a grammar school, whose function as governors consisted in administering a charitable trust, were not thereby a public authority or performing a public duty within s. 21 of the Limitation Act, 1939, and that an action for damages for personal injuries arising out of their negligence would accordingly lie against them, notwithstanding that the writ was issued more than twelve months after the cause of action had accrued.

In *R.* v. *Leon*, on 28th November (*The Times*, 29th November), the Court of Criminal Appeal (the LORD CHIEF JUSTICE and SINGLETON and BIRKETT, JJ.) quashed convictions under s. 13 (1) of the Debtors Act, 1869 (which provides that a person shall be guilty of a misdemeanour if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud) on the ground that "debt or liability" in the section meant an actionable debt or liability, and in the case before the court the debts in question were betting debts, which, by reason of s. 18 of the Gaming Act, 1845, were not actionable. The court, however, dismissed an appeal against convictions for "fraud in wagering" under s. 17 of the Gaming Act, 1845, on the ground that there was evidence on which the jury could have found those offences proved. The court reduced the appellant's sentence from nine months' imprisonment to three months.

In *In re Blake*, on 28th November (*The Times*, 30th November), the Court of Appeal (the MASTER OF THE ROLLS, FINLAY, L.J., and UTHWATT, J.) held, following *Dallow* v. *Garrold* (1884), 13 & 14 Q.B.D. 543, that where on a summons taken out by trustees under a will for the construction of the will an order was made declaring that the interest under the will of a party to the summons had ceased and all that he was entitled to was to have his taxed costs, amounting to £38 13s. 3d., paid out of the estate of the testatrix, those costs were property "recovered or preserved through the instrumentality" of the party's solicitors within s. 69 of the Solicitors Act, 1932, and the solicitors were therefore entitled to a charge on that sum for costs owed to them by their clients.

Tax on 1943-44 Pay Increases.

THE biggest task confronting the Inland Revenue in connection with the switch-over to the pay as you earn system as from 6th April, 1944, is the precise cancellation of tax for 1943-44. The department is now engaged on this task. It is a formidable one, as about 11,000,000 cancellation notices have to be issued. The cancellation is seven-twelfths of the 1943-44 tax in the case of Sched. E taxpayers, and ten-twelfths in the case of the manual wage earners previously assessed half-yearly. In the great majority of cases the five months' tax for 1943-44 paid by Sched. E taxpayers during the period from November, 1943, to March, 1944, and the two months' tax paid by manual wage earners for the months of February and March, 1944, should prove to be approximately correct. Nevertheless the precise cancellation has to be computed in every case and a notice issued to the taxpayer.

There is in addition another task which the Inland Revenue have to undertake in connection with the switch-over to pay as you earn. This is to compute the additional tax that is to be imposed on certain exceptional increases of remuneration for 1943-44. Directors and employees of companies are the people most likely to be affected, as they are the Sched. E taxpayers who may have had exceptional increases such as bonuses, etc., for 1943-44. There is, however, the possibility of exceptional increases throughout the whole Sched. E field of taxpayers.

Normally a Sched. E assessment for 1943-44 will be based on the remuneration received in the preceding year, 1942-43. As from 1944-45 the pay as you earn system operates, and the effect of this is that the remuneration received in 1943-44 will never form the subject of an income tax assessment. For this reason the Chancellor has considered it necessary to introduce special safeguards to prevent tax evasion among Sched. E taxpayers for 1943-44. Otherwise remuneration for 1943-44 might be artificially inflated so as to avoid taxation. When he first announced to Parliament his intention of introducing a pay as you earn system, the Chancellor drew attention to this possible loophole. He instanced the case of the one-man company with a proprietor drawing £2,000 a year in salary and another £2,000 in dividends. If he were to take the whole income of the business as salary to himself in 1943-44, the increase would, in the absence of a special safeguard, escape taxation altogether. The Chancellor indicated that in framing the pay as you earn legislation this point would be watched and suitable provisions included in the statute.

The safeguarding enactment was eventually embodied in s. 8 of the Income Tax (Offices and Employments) Act, 1944. The liability in respect of increases of remuneration for 1943-44 is not quite so wide in scope as the Chancellor envisaged when he made his original statement to Parliament. At that time it looked as though most increases of remuneration for 1943-44 would come within the net, but in the end the additional liability was confined to a fairly narrow category of cases. Under s. 8 the only increases that are liable are those granted after 20th September, 1943, this being the date of the initial announcement in the House of Commons that the Government had decided to introduce a pay as you earn system for 1944-45.

Section 8 excludes from additional liability all 1943-44 increases of a normal character. The full text of the section is as follows :—

" Where a person holds an office or employment in the year 1943-44 under such circumstances that the emoluments thereof are assessable to income tax under Sched. E by reference to the amount thereof for the previous year of assessment, and the actual emoluments arising from that office or employment for the year 1943-44 or any previous year of assessment are increased by reason of—

(*a*) additional remuneration being granted after the twentieth day of September, 1943 ; or

(*b*) a change in the conditions of service attaching to the office or employment being effected after the said date, the amount of the increase shall be added to the income arising from the office of employment as computed for the purposes of assessment to income tax for the year 1943-44 and charged to tax (including sur-tax) accordingly, but shall not be taken into account in considering whether any and if so what discharge of tax is to be made under s. 3 of the principal Act :

" Provided that this section shall not apply to any increase in emoluments arising from—

(i) a promotion in the ordinary course of events ; or

(ii) the ordinary application of an incremental scale of emoluments ; or

(iii) overtime paid for at ordinary rates,

or to any other similar increase of an ordinary character."

On 10th February last the Chancellor of the Exchequer made a speech which threw a good deal of light on how the Inland Revenue will apply and interpret s. 8. Following is an excerpt from this speech :—

" There will be no question of imposing an additional charge on all the large number of persons who will have received normal increases in pay. The expression ' other similar increase of an ordinary character ' will cover Christmas bonuses and other bonuses given in the ordinary course. The clause is intended thus to enable the Inland Revenue to ignore all the normal incidents of employment which may have resulted in additional remuneration for the current year, while giving the authorities power to take action where special transactions of an extra-ordinary character have taken place which might otherwise result in avoidance of tax."

The provision to assess exceptional increases of remuneration does not affect manual wage earners previously assessed half-yearly, because this category of taxpayers was assessed on the actual year basis under the old system. It is only non-manual workers who are affected.

The Inland Revenue will probably be raising additional assessments in the near future in those cases where it is contended that liability arises under s. 8. There may be some controversial points arising. For instance, there is the case where a Sched. E taxpayer may receive a bonus or exceptional payment for 1943-44 which is genuinely in respect of extra services rendered, but which does not fall within the categories of promotion, increment or overtime paid for at ordinary rates. There seem to be good grounds for contending that this type of case should not attract liability, and that the Inland Revenue should confine additional assessments to cases in which there appears to be good reason to believe that an increase in remuneration has been granted for 1943-44 with the object of avoiding tax liability. The view that the Inland Revenue will be prepared to interpret s. 8 in a reasonable and liberal manner is strengthened by the comments of the Chancellor in the Commons debate on 10th February. He said :—

" The provision I have included in the Bill will be administered in a liberal spirit and there will be no attempt on the part of the Inland Revenue authorities to bring under it changes of remuneration which are part of ordinary employment. But it will give them power—and this is necessary—to check any attempt at collusive evasion and, in this connection, it is to be remembered that even a person who is hit by the clause will have no legitimate ground of complaint, as he will merely be charged on what he has in fact received."

If an additional assessment is raised on an exceptional increase of remuneration the cancellation of seven-twelfths would not apply to it and tax would be payable on the full amount. This is made clear in s. 8.

A Conveyancer's Diary.

Disclaimer by a Liquidator.

ONE of the most important differences between the position of a trustee in bankruptcy and that of the liquidator of a company consists in the fact that the property of the bankrupt vests in the trustee (Bankruptcy Act, 1914, s. 53 (2)), while the company's property only vests in the liquidator if the court so orders (Companies Act, 1929, s. 190). As owner of the property the trustee in bankruptcy is also fixed with the liabilities that arise in respect of it, and he is thus naturally under some pressure to get rid as fast as he can of any of the property which has such liabilities attached to it. He is protected to a considerable extent by s. 54 of the Bankruptcy Act, which allows him to disclaim " land of any tenure burdened with onerous covenants, shares or stock in companies, unprofitable contracts, or any other property that is unsaleable, or not readily saleable, by reason of its binding its possessor thereof to the performance of an onerous act, or to the payment of any sum of money." Such disclaimer requires the leave of the court if it is in respect of certain sorts of lease, but is otherwise at the trustee's option.

Before the coming into force of the Companies Act, 1929, the liquidator of a company had no similar right, and, indeed, it is not altogether clear that he stood in need of it. However, by s. 267 of that Act, a liquidator was given power to disclaim the same sorts of assets and obligations as can be disclaimed by a trustee in bankruptcy, subject, however, to obtaining the prior leave of the court in all cases and not only where the disclaimer is of a lease.

The requirement of leave is important ; it makes the two powers very different in substance from one another. For leave is not given automatically to a liquidator ; it is a matter for the exercise of a judicial discretion. Thus, in *Re Katherine et Cie, Ltd.* [1932] 1 Ch. 70, the company had entered into a lease with certain lessors, the performance of the covenants in which was guaranteed by two guarantors. After a time, the company passed a resolution to go into voluntary liquidation, in which the liquidator sought leave to disclaim the lease. The application was resisted by the lessors on the ground that the guarantee was a substantial one so long as it stood, but that if the lease were disclaimed the covenant to pay rent (and all the other covenants, for that matter) would determine, so that nothing would be left for the guarantors to guarantee (see *Stacey* v. *Hill* [1901] 1 K.B. 660). The lessors succeeded in their contention. Maugham, J., first pointed to the difference between the liquidator and a trustee in bankruptcy. He also held that it was open to him to consider whether the granting of leave would, or would not, injure persons not directly interested. He then stated that, in the circumstances

before him, the lessors would be very seriously injured if leave were given, and on that ground refused to give leave.

The section was again referred to in connection with an obligation upon simple contract, in *Stead Hazel & Co.* v. *Cooper* [1933] 1 K.B. 840. The defendant was liquidator of a company which, before the liquidation, had contracted to buy from the plaintiffs bales of cotton in monthly instalments. After becoming liquidator, the defendant wrote a letter to the plaintiffs, signed " D. Cooper, Liquidator." The letter was very obscurely worded in so-called " business " English, but appears to have meant that the defendant, as liquidator, wished to continue buying the instalments of bales for the months following the order for winding up. Later, the defendant failed to take delivery of one of the instalments, and the plaintiffs sued him personally, relying on his letter as showing that he had made a new contract in his own name. In a reserved judgment Lawrence, J., pointed out that a liquidator appointed by the court is agent for the company. (In this he differs from a receiver and manager appointed by the court, who is acting on behalf of the debenture-holders and not on behalf of the company.) But the liquidator is only an agent: the company itself continues to exist and to be capable of owning property or of contracting. It followed that, in describing himself as " liquidator," the defendant was not purporting to contract on his own behalf but on the company's, and the plaintiffs did not give him credit on his own behalf. The action brought against the liquidator personally therefore failed. Lawrence, J., said that, in his view, the passing of the Companies Act, s. 267, which gave a right, with leave, to disclaim onerous contracts, could not of itself alter the liquidator's general position. If he had no personal liability before, the section could not have imposed it on him without clear words, which were not present. On the contrary, subs. (2) of s. 267 provided that, while disclaimer was to operate to determine the rights, interest and liabilities of the company, it should not " except so far as is necessary for releasing the company and the property of the company from liability, affect the rights or liabilities of any other person." It followed that the section could not have been intended to impose any personal liability on the liquidator since disclaimer would affect such liability by determining it.

Subsection (4) of s. 267 provides that the liquidator is not to be entitled to disclaim any property in a case where anyone interested in such property has applied to him in writing requiring him to decide whether or not to disclaim and where he has done nothing towards disclaimer for twenty-eight days after such notice. The subsection concludes with the words " and, in the case of a contract, if the liquidator, after such an application as aforesaid does not within the said period . . . disclaim the contract, the company shall be deemed to have adopted it." These words are not very well chosen; as we have seen, the company continues in being despite the winding up, and is, therefore, liable on its contracts unless they are validly determined by disclaimer or release. So there can be no question of the company " adopting " liabilities which already bind it. The words appear to have been taken over from the corresponding subsection of the Bankruptcy Act without sufficient attention to the difference in the positions of trustee and liquidator. They might be thought to mean that in the class of case referred to the liquidator is to be fixed with personal liability. But, though the point was not directly before the court in *Stead Hazel & Co.* v. *Cooper*, the reasoning in that case would seem to apply: there was no personal liability on a liquidator before the Act, and the words of s. 267 (4) do not clearly impose any new liability; indeed, the general sense of them is against the imposition of any such thing.

On the whole, s. 267 does not seem to be a very useful enactment and it is not likely to be very often invoked. The liquidator of a company will not often have a motive to disclaim, since he differs from a trustee in bankruptcy in that the company's property is not vested in him. Further, the leave of the court is always necessary, whereas a trustee in bankruptcy can often disclaim without any leave. And, finally, the necessary leave will not by any means necessarily be given; the court will be watchful of the interests of third parties (*Re Katherine et Cie, Ltd.*,; and will not merely be guided in granting or withholding leave by the question what will be the best way to make progress with the liquidation.

Supreme Court.

CHRISTMAS VACATION, 1944.

Notice is hereby given that an Order has been made under r. 6 of Ord. LXIII closing the offices of the Supreme Court in London (except the Personal Application Department at Somerset House) from Saturday, the 23rd, to Wednesday, the 27th December, 1944, inclusive, and also on Saturdays, the 30th December, 1944, and 6th January, 1945.

The Principal Probate Registry at Llandudno, the District Probate Registries and the Personal Application Department at Somerset House will be closed from Saturday, the 23rd, to Tuesday, the 26th December, 1944, inclusive.

The Order does not apply to the District Registries of the High Court, each of which will be closed on the same days as the local County Court Office. (See Ord. LXIII, r. 10.)

Landlord and Tenant Notebook.

Recoverable Rent and Public Policy.

Brilliant v. *Michaels* (1944), 88 SOL. J. 383, an action for specific performance brought by an intending tenant, was decided in the defendant's favour on the ground that no agreement had in fact been reached. Evershed, J., did, however, discuss at length one of the alternative defences, namely, that the date for the commencement of the term was insufficiently defined and depended upon a remote contingency, and the " Notebook " dealt with this subject last week (88 SOL. J. 404). But there was another alternative plea: the premises were a dwelling-house within the Increase of Rent, etc., Restrictions Acts, and the rent said to have been agreed upon was in excess of the permitted rent; so it was contended that specific performance could not be granted, a material term of the agreement being not wholly enforceable. The learned judge refrained from giving this point as much attention as that which he bestowed on the question of date of commencement; but did indicate that he inclined to the view that it was a good one. He was " not satisfied that the court ought to grant specific performance of an agreement one term of which, to the knowledge of the court, was unenforceable in whole or part, particularly where, as in this case, the limitation of the amount of rent was a matter of public policy."

The words in inverted commas were, I venture to suggest, chosen with some deliberation. Unenforceability and contravention of public policy have, as bars to claims for specific performance, much in common with illegality; but it is not illegal, in the sense of being a criminal offence, to let controlled premises unfurnished at more than the permitted rent, unless the letting in question be a sub-letting after judicial apportionment.

The law of landlord and tenant has, curiously enough, yielded practically no authority on any of the above-mentioned bars. *Cowan* v. *Milbourn* (1867), L.R. 2 Ex. 230, is perhaps the nearest case in point; and then the action was for damages, not for specific performance (which would have been impossible as the breach complained of took place at the last minute). This was the case in which the plaintiff took rooms intending to deliver blasphemous lectures; the defendant discovered this purpose shortly before the first lecture was to have been delivered, and declined to proceed with the letting. He was able to rely on the penal provisions of 21 Geo. 2, c. 49, apart from which Kelly, C.B., upheld the view that Christianity was part and parcel of the law of England. But the judgment of Bramwell, B., contains something which is more likely to prove helpful in connection with restriction of rent: " An act may be illegal in the sense that it will not be recognised by the law as capable of being the foundation of any legal right, or that it may even deprive *what it accompanies* of that capacity, although it is followed by no penalty." On these lines one could argue that an agreement such as the one alleged in *Brilliant* v. *Michaels* was unenforceable on the ground of illegality. A curious result indeed, for, other things being equal, it would be the plaintiff who alone would benefit; if the agreement were carried out, he could promptly reduce the rent to what was permitted.

But if illegality alone were relied upon, and illegality amounting to contravention of a penal statute, the " landlord " would be in a position to resume possession on the short and simple ground that he was not the landlord, for there was no tenancy and no protection. This, of course, would be absurd; and I suggest that the solution of the difficulty lies in treating the passage from Bramwell, B.'s, above-mentioned judgment in *Cowan* v. *Milbourn* as distinguishing between two kinds or degrees of illegal acts: those which are incapable of being the *foundation* of any legal right, and those depriving what they accompany of that capacity. An agreement to let at more than the permitted rent belongs, I submit, to the former class; the illegality does not deprive the grant of its validity, for the parties would not found their claims to enforcement on the reddendum. For the whole scheme of the Increase of Rent, etc., Restrictions Acts points to an intention that agreements of this kind are to be enforceable *pro tanto*.

Next, I will consider whether a decree might be refused on the ground of hardship. " The plaintiff must also show," said Lord Redesdale in *Harnett* v. *Yielding* (1805), 2 Sch. & Lef. 549, " that, in seeking the performance, he is not calling upon the other party to do an act which he is not *fully competent* to do, for, if he does, a consequence so produced quite passes by the object of the court in exercising the jurisdiction, which is to do more complete justice." The case was one in which a tenant for life had agreed to grant a lease for (or which might be for) more than the twenty-one years for which he was entitled to grant leases. If one reads the judgment as a whole, one sees that the learned Chancellor was feeling some concern at the readiness with which courts of equity were showing in granting equitable remedies, originally only available when damages would not compensate; and after the passage cited he referred to a somewhat different consideration, the fact that the result would possibly injure a third party by creating a title with which he might have to contend. Further, he considered it unconscionable on the part of a plaintiff who knew the position all along to seek this remedy.

These considerations can have little application in such a case as *Brilliant* v. *Michaels*. But when we come to the question of

public policy, ill-defined as that may be, decisions under the Increase of Rent, etc., Restrictions Acts themselves do much to support the attitude of doubt taken up by Evershed, J. On more than one occasion the late Lord Justice Scrutton had occasion not only to deplore the draftsmanship of this legislation, but also to inquire into its object in order that he might correctly interpret its provisions. Thus in his judgment in *Dufty* v. *Palmer* [1935] 1 K.B. 15 (C.A.) we find: "The Act was passed during the war at a time when increases of rent were being made, sometimes to an enormous extent over the rents which were being paid before the war, and the object of the Act was to prevent increases beyond the pre-war rent except as provided by the Act." It may also be borne in mind that the Increase of Rent and Mortgage Interest (Restrictions) Rules, 1920, direct county court judges (by r. 18) to satisfy themselves that orders for the recovery of rent may properly be made before making them. It may be contended that this provision is *ultra vires*, and it does not, of course, affect the High Court of Justice, which alone can decree specific performance; but on these lines it is certainly arguable that an intending tenant in the position of the plaintiff in *Brilliant* v. *Michaels* may find himself in this dilemma: either he means, once the lease comes into being, to pay the permitted rent only, and his conduct is therefore unconscionable towards the intended landlord, or he means to pay the agreed rent, in which case he may be considered to be acting contrary to the interests of tenants generally, being, as it were, a purchaser in the black market.

To-day and Yesterday.

LEGAL CALENDAR.

December 4.—On the 4th December, 1781, William Payne, James Sweetman and Matthew Knight were hanged at Execution Dock for piracy, having been found in arms against their country. Payne's body was afterwards taken to Yarmouth there to be hung in chains and those of the other two were taken down the river and hung in different places.

December 5.—On the 5th December, 1750, "was tried a cause between Commodore Dent, defendant, and Captain Mitchel, plaintiff, for the defendant's imprisoning him and taking from him the command of the *Duke* sloop of war at Jamaica. The damages were laid for £2,000, and the jury, which was special, brought in a verdict for the plaintiff with £20 damages."

December 6.—On the 6th December, 1777, John Holmes, the grave-digger of the burial ground of St. George the Martyr in Queen Square, Bloomsbury, Robert Williams, his assistant, and Esther Donaldson were tried at the Westminster Guildhall before Sir John Hawkins, the chairman of the sessions, on an indictment for a misdemeanour in stealing the dead body of Mrs. Jane Sainsbury, to sell it to the surgeons for dissection. About eight o'clock one evening a gentleman who lived near the Foundling Hospital was out walking with some friends when he met Williams carrying a heavy sack. Suspecting a robbery they challenged him and demanded what was in it, to which he replied: "I don't know." They then pulled it forcibly from his back and found the corpse of a woman tied up inside. Investigations at the burial ground revealed her empty coffin re-buried only six inches below the surface. The prisoners could not, in the opinion of the prosecution, be indicted for felony because they had taken nothing but the body, not even the shroud or the pillow. The woman was acquitted and the two men were found guilty and sentenced to be imprisoned for six months and twice severely whipped from Kingsgate Street to Dyott Street, though the whipping was afterwards remitted.

December 7.—Colonel Algernon Sidney, second son of the second Earl of Leicester, fought against the King in the Civil War but subsequently retired abroad when Cromwell assumed dictatorship. After the Restoration he did not come home but lived in different foreign countries till 1677, when, owing to the grave illness of his father, he obtained leave, with much difficulty, to return. He became involved in political intrigue, was among those who looked to the Duke of Monmouth to replace the Duke of York in the succession to the Crown, and came to be regarded by the Government as a dangerous man. On the discovery of the Rye House Plot he was arrested and sent to the Tower of London on a charge of high treason. On his trial he was found guilty, and on the 7th December, 1683, he was beheaded on Tower Hill. At the scaffold he behaved well, saying that he had made his peace with God, and that he came not thither to talk but to die. He said one short prayer, laid down his neck and bade the executioner do his office.

December 8.—Joseph Hunton was a rich Quaker who, finding himself in business difficulties, resorted to forging bills of exchange, was detected and was condemned to death. He was hanged at Newgate on the 8th December, 1828, before an immense crowd. Two elders of the Society of Friends sat up with him all the previous night during which he composed a long prayer, a copy of which he directed to his "dearly beloved wife." At half-past seven in the morning the elders left him and Mr. Sparks Moline, another Quaker, took their place. At a quarter to eight the under-sheriffs arrived, preceded by their tipstaffs, and Hunton seeing them, said: "I pray thee stay a minute; I'll not be long." He then concluded reading in a distinct voice the prayer he had composed during the night. The three other convicts who were to die were then brought in, accompanied by the chaplain, and while they were being pinioned he behaved with great calmness and devotion, repeatedly urging them to repentence. When his own turn came he stood up, deliberately took the white stock from his neck and approached the officers. Before the procession left the room he asked Mr. Moline not to leave him. In the lobby at the foot of the scaffold they sat down together. He was the last to be summoned to take his place on it. As he was very short, his rope was longer than that of the others. He appeared to die instantly.

December 9.—On the 9th December, 1819, John Taylor Coleridge, subsequently a judge of the Queen's Bench, wrote telling his father of his first appearance in court as a young barrister before four judges: "One day I had to fight a point a little before all four, and I was dreadfully embarrassed; it was altogether an awkward thing; the three came in just as the single judge was disposing of the point against me without hearing me, and I was obliged to get up three or four times before I could catch an eye or gain audience; when I did it was not a very patient one. But frightened as I was, I was determined not to sit down without being heard."

December 10.—On the 10th December, 1734, "a cause was tried in the Court of Common Pleas at Guildhall, between Mr. Greswood, master of the Swan and Rose Inn at Holborn Bridge, plaintiff, and Mr. Lancaster, treasurer to the subscribers to Epsom Races, defendant, on an action of trover for delivering to Mr. St. John a plate of 25 guineas value, judged by the clerk of the course to be won by Mr. St. John's horse Achilles against Mr. Greswood's Quiet Cuddy. 'Twas proved that Quiet Cuddy won the first heat, Achilles the second and the third was so nice a point as not to be determined by the witnesses, but it being inserted in the articles that if any rider jostled or showed foul play he should lose the heat and it being proved that Achilles' rider did jostle, the jury gave a verdict for the plaintiff."

APPRECIATION.

"Isn't the judge a dear? Would he mind if I went up and kissed him?" a widow of over seventy asked the usher, after a decision in her favour had been given by Judge Gordon Alchin at Edmonton County Court. Thus appreciation does come the way of the county court judges. A little while ago the charming Evelyn Dall, fresh from America and even younger than she is now, successfully defended an action brought against her in the Westminster County Court. Her impressions were highly favourable. "Imagine," she said afterwards, "a cute little room, all informal, with people bobbing up and down. And the judge—sweet thing!—sipping a cup of tea. I was so thirsty giving evidence I wanted to ask him for some." It is hard to believe that she would have been refused. Certainly she could never have found herself in the situation of the impoverished lady who, addressing the advocate who had won a case for her, said: "I have nothing to pay you with, sir, but my heart," and received the reply: "Hand it over to the clerk, if you please, I wish no fee for myself." A like remoteness was shown by Mr. Justice Blackburn during the trial of the Wallingford Election Petition, in which the ladies showed intense interest. One of them, arriving one day after he had taken his seat, had to pass him in order to get to her place. Her flounces became entangled with his legs and for a moment he was lost to the view of those in front while she presented the appearance of sitting on his knee. When he was disencumbered he was heard to declare emphatically that he "had never been in such a position before."

Obituary.

SIR WILLIAM MOORE.

The Rt. Hon. Sir William Moore, Bt., Lord Chief Justice of Northern Ireland from 1925 to 1937, died recently, aged eighty. He was educated at Marlborough and Trinity College, Dublin. In 1887 he was called to the Irish Bar, and took silk in 1899. He was called to the English Bar by Lincoln's Inn in 1899, later becoming a bencher of the King's Inns. In 1926 he was made an honorary bencher of the Inner Temple.

MR. A. WARNER, K.C.

Mr. Aucher Warner, K.C., died on Friday, 1st December, aged eighty-one. He was called by the Inner Temple in 1882, and was a former Attorney-General of Trinidad. He was a direct descendant of Sir Thomas Warner, who founded in the island of St. Christopher—more familiarly known as St. Kitts—the first English colony in the West Indies.

MR. R. A. CHRISTIAN.

Mr. R. A. Christian, solicitor, of Alfreton, died on Monday, 27th November, aged eighty. He was admitted in 1889. For thirty-five years he was registrar of Alfreton County Court, from which office he retired eight years ago.

MR. S. G. WILKINSON.

Mr. Surtees George Wilkinson, solicitor, of Messrs. Wilkinson and Butler, solicitors, of St. Neots, Hunts, died on Thursday, 16th November, aged seventy-four. He was admitted in 1895.

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Death Duties—Home Guard.

Sir,—Referring to your issue of 28th October last at p. 364, I think you will be interested to know of the following case in which the firm with whom I am associated has been concerned.

The deceased for some time previous to his death was a full-time officer in the Home Guard, and acted as a bombing officer and weapon training officer for the zone, which entailed most strenuous and exacting work on his part, and the cause of death was pulmonary tuberculosis.

Application for partial remission of death duties on the occasion of the death was made under s. 38 of the Finance Act, 1924, on the ground that the deceased had died from disease contracted on service which was of a warlike nature or otherwise involved the same risks as active service, but the War Office replied that no recommendation for the remission of death duties could be made on the ground "that it is not considered that the deceased died of disease contracted whilst on active service within the meaning of s. 38 of the Finance Act, 1924." The application had been accompanied in support by statements of the deceased's medical adviser, Home Guard commander and a relative, setting out the nature of his work and service in the Home Guard and the circumstances attending his illness and death, and the decision of the War Office being considered as having been made on an incorrect basis, a further letter was sent to them asking them to reconsider the application, and pointing out that the claim to partial remission was not based on any suggestion that the deceased contracted the disease from which he died whilst on *active* service, but that such disease was contracted while he was on service as a Home Guard, and that such service was of a warlike nature, and a right to relief under s. 38 was made out. My firm has now heard from the War Office that they recommend the application for such relief as is authorised by s. 38, and that the Estate Duty Office will give effect to the recommendation, from which you will see that the application has been successful. The War Office has had the reconsideration in hand for over three months, and possibly they may have been awaiting the decision in the House of Lords' case, although that decision has really no bearing on the matter since the deceased in my firm's case could not come within the category of "a common soldier."

SUBSCRIBER.

1st December, 1944.

Points in Practice.

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L.P.A., 1925—TRANSITIONAL PROVISIONS—*Re Dawson's S.E.*

Q. A.B. died on the 12th September, 1903, having by his will appointed C and D executors and trustees thereof. D resigned from the trusteeship and E was appointed a trustee in his place on the 25th July, 1906. The testator gave and devised his real estate to his trustees upon trust to pay one half of the income thereof to his son C for life and the other half to his daughter F for life, and after the death of his said son and daughter upon trust for sale and to divide the net proceeds thereof between the children of his said son and daughter, such division to be made per *stirpes* and not per *capita*. The son C died on the 14th September, 1939, the daughter F died recently and the estate now becomes divisible. The question now arises as to who is the proper person to sell and wind up the estate. The trustee E left his home some thirty years ago and nothing has been heard of him since by the parties concerned in the trust. If he is dead and died before C it is presumed that the personal representative of C could act in the trusts of the will, but there is no proof that E is dead. The idea of advertising naturally occurs, but it is felt that after such a lapse of time and with the meagre facts the persons concerned have in their possession, the results would be negligible. Owing to the smallness of the estate it is wished to avoid an application to the court. Can C's personal representative safely act on the assumption that E predeceased C? Can she sell the real estate as the personal representative of the last surviving trustee and give a valid receipt for the purchase money without appointing another trustee? If two persons are necessary to give a receipt in what capacity would they act, that is, would one act as personal representative and the other as a trustee appointed by her? Could a purchaser be compelled to accept the title? It will be observed that the trust for sale did not arise until after the deaths of both the tenants for life and that there was therefore settled land. Wolstenholme's & Cherry's "Conveyancing Statutes," 11th ed., states, on p. 610 towards the end of a note: "*Semble* if land is devised to trustees on trust for tenants in common for life with remainder on trust for sale the legal estate would vest in the trustees on trust for sale." Does this apply to the present case so that the real estate vested in the trustees on trust for sale? Alternatively, can it be maintained that the two tenants for life constituted the tenant for life for the purposes of the Settled Land Act. There has, of course, been no vesting assent. Can the personal representatives of F, the last surviving tenant for life, claim that the legal estate is vested in them?

A. We express the opinion that in view of the decision in *Re Dawson's S.E.* [1928] Ch. 421, the legal estate vested on 1st January, 1926, in the trustees (C and E) upon the statutory trusts under L.P.A., 1925, Sched. I, Pt. IV, para. 1 (1). On the cesser of the settlement the property is not limited so as to devolve as an undivided whole, for a trust for sale then arises (*Re Higgs and May's Contract* [1927] 2 Ch. 249), therefore the fourth paragraph added to this part of this schedule (Sched. IV) to L.P.A., 1925, by L.P. (Amend.) A., 1926, Sched. is not in point. A trust to pay income in undivided shares is within the scope of the schedule (Sched. IV). See *Re Barrat; Body* v. *Barrat* [1929] 1 Ch. 336. If E died before C, then C's personal representative could (under T.A., 1925, s. 36) appoint two new trustees of the statutory trusts and those trustees could effect the sale. The personal representative of C can exercise or perform her testator's (or intestate's) trusts (T.A., 1925. s. 17), but this provision is limited until new trustees are appointed, and by the need for two trustees to give a valid receipt. If this personal representative appointed herself and another they would *both* function as trustees. There could be no question of C acting as a personal representative and the other trustee as a trustee. Unfortunately, it is not known whether E died before C and it cannot be assumed that he did so die. If E cannot be traced, or if it cannot be proved that he is abroad or predeceased C, it would seem that an application to the court is inevitable.

DEPARTMENTAL COMMITTEE ON VALUATION FOR RATES.

The report to the Minister of Health by the Departmental Committee on Valuation for Rates has now been published. Copies may be obtained from The Solicitors' Law Stationery Society, Ltd., 88–90, Chancery Lane, W.C.2, price 1s., post free 1s. 2d.

The Committee was appointed in 1938 to consider allegations which had been made that a strict application to certain classes of property of the existing law of valuation for rating would cause undue hardship, and, if those allegations were found to be justified, to report what amendment of the law was desirable.

The report was made in 1939, but its publication was deferred owing to the war. In 1942 the then Minister of Health stated in Parliament that the terms of reference to the Committee had been limited to investigating a particular issue relating to the assessment of small houses, and had no bearing on the machinery of valuation for rates or on other local government functions. He also stated that many material factors affecting the issue investigated by the Committee had changed under war conditions, and that he was not convinced that at that time the publication of the report would serve a useful purpose.

The question of publication was again raised in Parliament in October, 1944, and the Minister of Health said that he had come to the conclusion that although, as had been stated by his predecessor, conditions have materially altered since the report was drafted, there would be advantage in publishing it—if only to indicate the nature of the problem.

INSURANCE UNDER THE COMMODITY INSURANCE, BUSINESS AND PRIVATE CHATTELS SCHEMES.

The Board of Trade announce that all policies for fixed sums under the *Commodity Insurance Scheme* which were in force on 2nd December, 1944, will be extended until 2nd March, 1945, without further payment of premium or the necessity for further action. Holders of adjustable policies will be required to continue weekly declarations and to pay premium on any excess of the average cover during the three months of extension over the average cover in the three months ending 2nd December.

For new or additional insurance under the Commodity Insurance Scheme, the rate of premium has been reduced to 2s. 6d. per cent. for the three months, 3rd December, 1944, to 2nd March, 1945, with a minimum premium of 5s.

All policies under the *Business Scheme* which are in force on 31st December, 1944, will be extended for a further period of three months, until 31st March, 1945, without further payment of premium or the necessity for further action. For new or additional insurance under that scheme, the rate of premium for the three months, 1st January to 31st March, 1945, will be 1s. 8d. per cent. with a minimum premium of 5s.

Insurance under the Commodity Insurance and Business Schemes will not be given in the absence of a policy.

All policies under the *Private Chattels Scheme* which are due to expire on or after 23rd November, 1944, and prior to 30th April, 1945, will be extended to 30th April, 1945, without further payment of premium or further action by policy-holders.

For new or additional insurance under the Private Chattels Scheme (i.e., insurance over and above the free cover or any cover given by another policy in force under the scheme), premium will be payable at the reduced rates given below and policies issued at these rates on or after 23rd November, 1944, will be valid until 30th April, 1945, and no longer:—

2s. 6d. per cent. up to £2,000;
3s. 9d. per cent. for the next £1,000; and
5s. per cent. for the next £7,000;

with a minimum premium of 5s.

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Trinidad Lake Asphalt Operating Co., Ltd. *v.* **Commissioners of Income Tax for Trinidad and Tobago.**

Viscount Simon, L.C., Lord Wright, Lord Porter, Lord Simonds, and Lord Goddard. 17th October, 1944.

Trinidad and Tobago—Revenue—Income tax—Dividend declared payable to non-resident shareholder—Dividend cancelled against debt owing by shareholder—Whether company a statutory agent—"Transmission"—Liability to Income Tax Ordinance, 1940, *c.* 33, *No.* 1—*ss.* 5, 30.

Appeal from a decision of the full court of the Supreme Court of Trinidad and Tobago.

The appellant company was incorporated in Trinidad, where it carried on business. Of its 500,000 issued share capital, 499,992 shares were held by the B corporation, a body incorporated in New Jersey and non-resident in the colony. The appellant company dealt in asphalt, which it sold to various purchasers, including the B corporation. On the 24th November, 1939, the B corporation owed the appellants $1,207,817. On that date a resolution was passed by the appellants' directors that a dividend of $1,207,817 be declared payable by cancellation of the company's claim in a like amount against the B corporation. The Commissioner of Income Tax for Trinidad assessed the company to income tax under s. 30 of the Income Tax Ordinance, 1940, then in force in the colony. The company appealed against the assessment. That appeal was dismissed by Perez, J., in accordance with the judgment of the full court. The Income Tax Ordinance, 1940, s. 30, provides: "Any resident agent, trustee, mortgagor, or other person who transmits rent, interest, or income derived from any other source within the colony, to a non-resident person shall be deemed to be the agent of such non-resident person and shall be assessed and shall pay the tax accordingly."

LORD WRIGHT, delivering the opinion of the Board, said it was not disputed that the dividend was the income of the B corporation accruing in or derived from the colony within s. 5 of the ordinance, and that the B corporation was liable to tax on the dividend. Section 5 expressly provided for the imposition of the tax on the income of any person accruing in or deriving from or received in the colony in respect of, *inter alia*, dividends or interest. Section 30 it was said, if construed as the full court had done, might be regarded as extra-territorial in effect. There was in their lordships' judgment no ground for treating the section as extra-territorial or in requiring it to be treated as otherwise than in accordance with the ordinary meaning of the words used. It was not extra-territorial merely because its purpose was indirectly to secure payment from the non-resident of the tax which was validly imposed on him. The person directly affected was the statutory agent, in this case the appellant, who was within the colony. The obligation was imposed directly on him. His liability was complete, when within the colony, he did the act which transmitted the income to the non-resident. The main contention on behalf of the appellants was that the transaction did not evolve a "transmission" of the dividend to the B corporation and that the condition of s. 30 had not been fulfilled. Their lordships accepted that the word "transmission" meant in the context, transmit to a resident outside the colony. In the present case, it was impossible to say that the entries in the books of the two companies did not represent a genuine transaction and a receipt of money in the form in which money was transmitted and received as between business men. What had happened was, if it were so intended, equivalent to a receipt of money. A receipt of anything by a person who was at a distance from the sender involved transmission. In the present case the transaction involved a transmission of revenue by the sender within s. 30, with the consequence that the appellants become liable as statutory agents for the amount of the tax. The appeal failed.

COUNSEL: *J. M. Tucker*, K.C., and *N. E. Mustoe*; *The Attorney-General* (Sir Donald Somervell, K.C.), and *Reginald P. Hills*.

SOLICITORS: *Lawrance, Messer & Co.*; *Burchells*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

Re **King-Emperor** *v.* **Benoari Lal Sarma.**

Viscount Simon, L.C., Lord Roche, Lord Porter, Lord Goddard and Sir Madhaven Nair. 6th November, 1944.

India—Emergency legislation—Validity of order establishing special criminal courts—Government of India Act, 1935 (25 & 26 *Geo.* 5, *c.* 42), *s.* 72 *of 9th Schedule—Special Criminal Courts Ordinance, No.* 11 *of* 1942 (*as amended*).

Appeal by the Government of India, by leave, from a judgment of the Federal Court, affirming a decision of the High Court of Calcutta.

The Government of India Act, 1935, by the 9th Schedule, s. 72, provides: ". . . the Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good government of British India or any part thereof . . ." The Special Criminal Courts Ordinance, No. 11 of 1942, made under s. 72, after reciting that an emergency had arisen which made it necessary to provide special criminal courts, provided for the establishment of criminal courts with special judges. The limits of the jurisdiction of these courts and their procedure was duly laid down. Section 1 (3) provided that the ordinance "shall come into force in any province only if the Provincial Government, being satisfied of the existence of an emergency . . . declares it to be in force in the province." There were further provisions empowering local governments to decide the kinds of cases to be tried by the special courts. The appellate powers of the High Court were excluded. The fifteen respondents had been convicted on charges of riot and assault by a special magistrate purporting to act under the ordinance of 1942. The High Court of Calcutta set aside the convictions on the ground that the ordinance of 1942 was *ultra vires* the powers conferred by s. 72 of the Act of 1935. The Government of India appealed. The respondents did not appear.

VISCOUNT SIMON, L.C., delivering the opinion of the court, said that Ordinance No. 11 of 1942 having been repealed, the question had become academic. Their lordships proposed, however, to consider whether the ordinance was valid. The question whether an emergency existed at the time when an ordinance was made under s. 72 was a matter of which the Governor-General was the sole judge. It was argued that the ordinance was invalid, first, because s. 1 (3) showed that the Governor-General did not consider an emergency existed, but was merely making provision for a future emergency; secondly, because the section amounted to "delegated legislation," by which the Governor-General sought to pass the decision as to whether an emergency existed on to the Provincial Governments, instead of deciding it himself. As regards the first objection, an emergency might exist, which made it necessary to provide for the setting up of special criminal courts without requiring such courts to be set up immediately all over British India. The second objection was also unfounded. There was no delegated legislation. This was an example of a not uncommon legislative arrangement by which the local application of the provisions of a statute was determined by the judgment of a local administrative body as to its necessity. The last objection was that the ordinance made it possible to discriminate between one accused and another and between one class of offence and another. Cases might be tried in the special courts or the ordinary criminal courts according to the decision of the provincial authority. It might be better to frame a statute in such a way that an offender would know in advance before what court he would be brought. There was nothing in the Indian Constitution to render invalid a statute which did not accord with that principle. The Parliament of Westminster could enact that the choice of courts should rest with an executive authority. There was no valid reason why the same discretion should not be conferred in India by the law making authority. The appeal should be allowed and the Ordinance No. 11 of 1942 declared not to be *ultra vires*.

COUNSEL: *Macaskie*, K.C., *Sir Walter Monckton*, K.C., *Sir Thomas Strangman*, K.C.; *Wallach and Handoo*, for the Crown; *Comyns Carr*, K.C., *J. M. Parikh* and *Ralph Parikh*, as *amici curiæ*.

SOLICITORS: *Solicitor, India Office*; *Lambert & White*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

Tuchman *v.* **Schmerler.**

Cassels, J. 3rd November, 1944.

Moneylenders—Loans to a friend—Not a moneylender—Catching bargain—Interest reduced—Non-registration of bill of sale—Breach of Courts (Emergency Powers) Acts, 1939 *to* 1943—*Failure to obtain leave of court to sell property.*

The plaintiff sought to recover £249 10s. 6d., the balance of money lent and agreed bonuses. The defendant alleged that the plaintiff was a moneylender and was not entitled to recover anything owing to non-compliance with the Moneylenders Acts, 1900–27, and he counter-claimed for a declaration of illegality, relief from excessive interest under the Moneylenders Acts, 1900–27, on the ground that the transactions in question were harsh and unconscionable, damages for trespass and conversion of goods and breach of the Courts Emergency Powers Acts, 1939 to 1943.

From December, 1942, to April, 1943, the plaintiff, who was an insurance agent, lent the defendant money on four separate occasions for short periods of a few months. The plaintiff was a German refugee who came here in 1939, and the defendant was a Polish refugee who arrived here in 1940, having left Paris immediately after the fall of that city into German hands. He had lost everything in Paris, but his wife had a few thousand pounds in money and jewellery. The plaintiff got to know the defendant in 1941 through insurance business. The first loan was for £75, the second of £250, the third £300 and the fourth £70. The agreed bonuses were £15, £40, £80 and £5 on the respective loans. A pawn ticket on a lamb coat was taken as security in the first transaction, and there was an additional security of a dining room suite. On the second loan a document in the nature of a bill of sale but not in the statutory form required by the Bills of Sale Act was entered into by the parties, on a radiogram for £50, a Persian carpet for £100, and a cocktail cabinet for £140, which were at the defendant's flat. The third transaction was secured by some brocades. Shortly after the loans the plaintiff took a document in the nature of a bill of sale on a grand piano as security for the balance of £40. Later the plaintiff sold the carpet for £65, the piano (by auction) for 18 guineas, the cocktail cabinet for £35 14s., and a coffee table for £4 5s., and was able to credit the defendant with £115 9s. 6d., the total proceeds on these sales. He also sold the brocades and credited the defendant with £300, the price realised by the sale. The plaintiff had no order of the court or leave of the court to sell, and was in breach of the Courts (Emergency Powers) Act, 1943.

CASSELS, J., said that it had been contended for the defendant that the plaintiff, by the form of the transaction, by the document which he required the defendant to sign, by the securities upon which he insisted, and by the high rate of interest, was really a professional moneylender, and *Edgelow* v. *MacElwee* [1918] 1 K.B. 215, was cited, where the facts were somewhat similar. His lordship held that it had not been made out that the plaintiff was a moneylender carrying on a moneylending business, and held that the transactions were as between friends. The only other occasion apart from the transactions with the defendant when the plaintiff had lent money had been to two friends, where there had been a single transaction in each case and no interest had been charged. His lordship said that although the plaintiff was not a professional moneylender he had to consider whether when one calculated the amount of interest which was arranged this was

not one of those cases in which the plaintiff had caught at a bargain for the purpose of obliging his friend with sums of money for short periods in consideration of the payment of considerable amounts of interest (see "Pollock on Contract," 11th ed. (1942), pp. 510–519). Having regard to all the circumstances, including the security taken and the short periods for which the loans were made, held that this was a catching bargain and substantially reduced the bonuses, and held that the plaintiff was entitled to receive £159 10s. 6d. from the defendant. On the counter-claim his lordship held that the plaintiff had no right to sell on documents which were void; he had no order or leave of the court, and he was wrong in every step he took. His lordship awarded the defendant £35 damages for trespass and conversion. Judgment for the plaintiff for £159 10s. 6d. on the claim, and judgment for the defendant for £35 on the counter-claim. His lordship having taken into account that the defendant had not suffered much by the sale of the brocades because he had secured a reparation of the original debt of £300 by their sale; the defendant to pay two-thirds of the plaintiff's taxed costs. No costs on the counter-claim.

COUNSEL: *H. Lester; Harold S. Simmons.*

SOLICITORS: *Spiro and Steele; E. M. Lazarus & Son.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Parliamentary News.

HOUSE OF COMMONS.

Outlawries Bill [H.C.].

For the more effectual preventing Clandestine Outlawries.

Read First Time. [29th November.

Expiring Laws Continuance Bill [H.C.].

To continue certain expiring laws.

Read First Time. [1st December.

QUESTIONS TO MINISTERS.

FURNITURE VALUATIONS FOR ESTATE DUTY.

Mr. R. C. MORRISON asked the Financial Secretary to the Treasury what recent changes there have been in Customs and Excise methods of valuation of furniture for death duties; and to what extent the valuation is now based upon replacement prices.

Mr. PEAKE: The basis of valuation of property for estate duty purposes as prescribed by s. 7 (5) of the Finance Act, 1894, is the market value at the date of death. There has been no change in the method of valuing furniture. [28th November.

War Legislation.

STATUTORY RULES AND ORDERS, 1944.

No. 1303. **Aliens** (Movement Restriction) (No. 3) Order. Nov. 21.

No. 1315. Aliens (No. 2) Order in Council. Nov. 23.

E.P. 1304. **Closed Ports.** The United Kingdom (Closed Ports) Amendment Order. Nov. 22.

E.P. 1311/13 (as one publication). **Defence** Orders in Council, Nov. 23, 1944, amending the Defence (General) Regulations, 1939—

1311. Adding Reg. 60CAA.

1312. Adding Reg. 68D.

1313. Adding Reg. 68E.

E.P. 1314. Defence (War Risks Insurance) Regulations Order in Council. Nov. 23.

E.P. 1269. **Finance.** The Capital Issues Exemptions Order. Nov. 16. (See *ante*, p. 408.)

E.P. 1291. **Food.** Fresh Fruit and Vegetables (Restriction on Dealings) Order. Nov. 18.

E.P. 1277. Food (Meals in Establishments) Directions, Nov. 14, under the Meals in Establishments Order, 1942.

No. 1292/S. 62. **Housing** (Scotland) Acts (Forms of Orders and Notices) Amendment Regulations. Nov. 16.

No. 1302/S. 63. **Probation of Offenders,** Scotland. The Probation (Scotland) Rules, Nov. 15, amending the Probation (Scotland) Rules, 1931.

E.P. 1299. **Public Utility Undertakings.** The Accounts General Direction and Order. Nov. 21.

No. 1251. Public Works Loans. Further Regulations. Nov. 10.

No. 1309. **Town and Country Planning** (Development by Authorities) Regulations. Nov. 18.

No. 1306. **Trading with the Enemy** (Specified Areas) Revocation Order. Nov. 24.

No. 1305. Trading with the Enemy (Specified Persons) (Amendment No. 14) Order. Nov. 23.

No. 1298. **War Damage** (Private Chattels Scheme) (Extension of Insurance of Premium) Order, Nov. 22.

No. 1325. **War Risks Insurance** (Commodity Insurance) (Extension of Insurance and Premium) Order. Nov. 23.

MINISTRY OF HEALTH.

Departmental Committee on Valuation for Rates (Chairman, Mr. Maurice Fitzgerald, K.C.) Report. 2nd Aug., 1939.

WAR DAMAGE COMMISSION.

Cost of Works (Scotland). Explanatory Pamphlet issued by the War Damage Commission, in agreement with the Scottish National Building Trades Federation (Employers), as to Procedure in arranging for the repair of War Damage and the Assessments of Payments of Cost of Works. (Form ROD. 1 (Scotland)). Oct., 1944.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. RICHARD BUSH JAMES, K.C., to be a Commissioner of Assize on the Western Circuit. He will sit at Winchester in the place of Mr. Justice Bucknill, who is indisposed. The King has also approved the appointment of Mr. JOHN WILLIAM MORRIS, K.C., to be a Commissioner of Assize on the Midland Circuit. Mr. Morris will sit at Birmingham.

The Lord Chancellor has appointed Mr. THOMAS MILWYN LLOYD JENKINS to be the Registrar of Newtown County Court and District Registrar in the District Registry of the High Court of Justice in Newtown, and Mr. THOMAS EYTON MORGAN the Registrar of Aberystwyth County Court and District Registrar in the District Registry of the High Court of Justice in Aberystwyth to be *in addition* Registrar of the Machynlleth County Court. Both appointments take effect from the 1st December, 1944.

The Colonial Legal Service announce the following appointments: Mr. E. E. JENKINS, Attorney-General, Fiji, to be Chief Justice, Nyasaland; Sir C. R. W. SETON, M.C., Chief Justice, Nyasaland, to be Chief Justice, Fiji.

Notes.

Mr. R. Warden Lee has been elected Treasurer of the Honourable Society of Grays' Inn.

The Recorder of Belfast, Judge J. Desmond Chambers, has resigned the office for personal reasons.

Mr. William L. Bateson has been elected President of the Incorporated Law Society of Liverpool. He was admitted a solicitor in 1921, and is senior partner of Messrs. Batesons & Co. He is the eldest son of the late Mr. Justice Bateson.

Miss Megan Lloyd George, Liberal M.P. for Anglesey, is to have a Labour opponent at the next election. He is Flying Officer Cledwyn Hughes (twenty-eight) a Holyhead solicitor, who has been unanimously adopted as the prospective candidate by the Anglesey Labour Party.

The Lord Chancellor, Viscount Simon, has consented to be the principal guest at a luncheon on 18th December at the Savoy Hotel to celebrate the Jubilee of the Society of Comparative Legislation. Particulars may be obtained from the Honorary Secretaries, 28, Essex Street, London, W.C.2.

In a case which was heard by Vaisey, J., in the Chancery Division on Friday, 1st December, a testatrix had executed a home-made will, using a stationer's will form costing 6d. On questions of interpretation of the will a summons was taken out, and no fewer than eleven counsel were briefed to contend for different points of view, instructed by six separate solicitors. The estate was worth about £4,500.

THE U.S.S.R. AND THE PROBLEM OF WAR CRIMES.

Dr. B. Ecer, Czechoslovak representative on the United Nations War Crimes Commission, will lecture on "U.S.S.R. and the Problem of War Crimes" on Thursday, 14th December, at the London School of Hygiene, W.C.1, at 5.30 p.m. Dr. Ecer will base his lecture on the recent significant work published in Moscow by Professor Trainin, the eminent Soviet jurist, and will compare the Soviet point of view with that of the other Allies, establishing the points of contact and the points of difference. Professor Trainin himself separates crimes against international law into two categories: in the first are those crimes against the peaceful existence of nations, including not only open aggression, but the preparation for it in the form of propaganda, instigation of terrorism, fifth column work; in the second are crimes against the rules of war. In the attribution of guilt, Professor Trainin considers that in crimes against international law, political and material responsibility only can be laid to the State, while criminal responsibility must be borne only by physical persons. Sir Walter Monckton, K.C.V.O., M.C., K.C., will take the chair. Tickets, price 2s., may be obtained from the Society for Cultural Relations with the U.S.S.R., 98, Gower Street, London, W.C.1.

Court Papers.

Supreme Court of Judicature.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.		Emergency Rota.	Appeal Court I.	Mr. Justice Morton.
Mon., Dec.	11	Mr. Jones	Mr. Blaker	Mr. Andrews
Tues.,	12	Reader	Andrews	Jones
Wed.,	13	Hay	Jones	Reader
Thurs.,	14	Farr	Reader	Hay
Fri.,	15	Blaker	Hay	Farr
Sat.,	16	Andrews	Farr	Blaker

		Group A.		Group B.	
Date.		Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey *Non-Witness.*	Mr. Justice Uthwatt *Witness.*	Mr. Justice Evershed *Non-Witness.*
Mon., Dec.	11	Mr. Hay	Mr. Farr	Mr. Jones	Mr. Reader
Tues.,	12	Farr	Blaker	Reader	Hay
Wed.,	13	Blaker	Andrews	Hay	Farr
Thurs.,	14	Andrews	Jones	Farr	Blaker
Fri.,	15	Jones	Reader	Blaker	Andrews
Sat.,	16	Reader	Hay	Andrews	Jones